

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division**

JOHN DOE 4, by and through his next friend,
NELSON LOPEZ, on behalf of himself and all
persons similarly situated,

Plaintiffs,

v.

SHENANDOAH VALLEY JUVENILE
CENTER COMMISSION,

Defendant.

Civil No. 5:17-cv-00097-EKD/JCH
Judge Elizabeth K. Dillon

PLAINTIFFS' CONSENT MOTION TO MODIFY SCHEDULING ORDER

Plaintiffs John Doe 4, *et al.*, by and through their Next Friend, Nelson Lopez, by their undersigned attorneys, hereby move this Court, subject to the express consent of Defendant Shenandoah Valley Juvenile Center Commission, for the entry of an Order modifying the currently operative Scheduling Order entered January 22, 2018 (ECF Docket No. 19).

As support for their Consent Motion, Plaintiffs state as follows:

1. Under the provisions of the current Scheduling Order, Plaintiffs filed a Motion for Preliminary Injunction and supporting papers in this action on February 28, 2018. *See* ECF Dkt. Nos. 33, 34.
2. After the completion of briefing on Plaintiffs' Motion with the filing of their Reply Memorandum on April 4, 2018 (ECF Dkt. No. 50), the Parties, by counsel initiated communications with the Court's staff in order to attempt to secure available dates on the Court's calendar for the 2.5-3 day hearing on the Motion that counsel believed would be needed.

3. Unfortunately, due to the extensive pre-existing demands on the Court's availability, no openings on the calendar sufficient to accommodate the Parties' estimated need were readily at hand; the Parties ultimately agreed to set September 10, 2018 as the date for commencement of the hearing on the Motion for Preliminary Injunction, subject to the understanding that this case is second on the Court's docket for that date and that absent a settlement or other resolution of the first case on the docket for September 10, the hearing on Plaintiffs' Motion would have to be continued.

4. In addition to the difficulties associated with scheduling a hearing on the Motion for Preliminary Injunction, which neither Party fully anticipated, unexpected developments with respect to the status of Named Plaintiffs John Doe 1, John Doe 2 and John Doe 3 -- as described more fully in Plaintiffs' Consent Motion for Substitution of Class Representative and supporting Memorandum, filed July 27, 2018 (ECF Dkt. Nos. 70, 71) -- required Plaintiffs to prepare and file a Second Amended Complaint identifying John Doe 4 as the new Named Plaintiff and putative class representative on July 11, 2018 (ECF Dkt. No. 68).¹

5. These changes in the profile of the case and the Parties' need to address them have undoubtedly caused delays in the progression of the litigation in general and the conduct of discovery in particular. Notwithstanding these delays, both Parties are of the view that an expeditious resolution of the merits of the constitutional claims asserted by Plaintiffs is in all sides' best interest. At this point, the Parties' shared belief is that the best course to achieve this objective is to maintain the currently-established Trial Date of December 3, 2018, but subject to significant modifications to the existing Scheduling Order which are necessary in order to allow

¹ This Court granted Plaintiffs' Motion for Substitution and designated Plaintiff Doe 4 as class representative by Order dated August 8, 2018 (ECF Dkt. No. 72).

the Parties an ambitious, but fair and balanced, opportunity to prepare their respective cases for trial.

6. Accordingly, and subject to the understanding that the modifications proposed below must be agreeable and acceptable to the Court, the Parties jointly propose a modified schedule consisting of the following elements:

- a. Plaintiffs hereby withdraw, without prejudice, their pending Motion for Preliminary Injunction, as well as their demand for Trial by Jury.
- b. Discovery, currently suspended per informal agreement of counsel, shall formally resume in all aspects as of the date of entry of the Amended Scheduling Order by this Court.
- c. Thereafter, this case shall proceed to trial in accordance with the following schedule.

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|----|--------------------|---|
| 1. | September 7, 2018 | Deadline for Plaintiffs' Disclosures regarding Trial Experts |
| 2. | September 28, 2018 | Deadline for Defendants' Disclosures regarding Trial Experts; Deadline for Completion of Fact Discovery |
| 3. | October 8, 2018 | Deadline for Plaintiffs' Rebuttal Expert Disclosures |
| 4. | October 15, 2018 | Deadline for Completion of Expert Depositions and Close of Discovery |
| 5. | October 22, 2018 | Deadline for Submission of Dispositive Motions and Motions to Exclude Experts |

- | | | |
|----|-------------------|---|
| 6. | November 5, 2018 | Oppositions to Dispositive Motions and Motions to Exclude Experts |
| 7. | November 12, 2018 | Replies concerning Dispositive Motions and Motion to Exclude Experts; Deadline for Exchange of Trial Witness and Trial Exhibit Lists, Deposition Designations and filing of Motions in Limine |
| 8. | November 19, 2018 | Oppositions to Motions in Limine; Deadline for Objections to Deposition Designations and Exchange of Counterdesignations |
| 9. | November 26, 2018 | Combined Omnibus Hearing on All Pending Motions and Joint Pretrial Conference |

7. Although the Parties fully understanding and appreciate that the truncated schedule they have suggested would impose very significant burdens and obligations upon the Court and its staff as well as upon each other, they are hopeful that the Court would be agreeable to work with the Parties to keep the case on track for a December 2018 trial in light of the urgency with which injunctive relief is needed in the event the Plaintiffs' claims are proved meritorious at trial, as well as the Defendants' compelling interest in the public vindication of its operations, practices and procedures if Plaintiffs' claims are disproved.

CONCLUSION

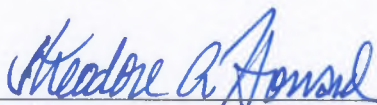
For the foregoing reasons, Plaintiffs respectfully suggest that this Consent Motion to Modify Scheduling Order should be granted.

DATED: August 14, 2018

Respectfully submitted,

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ORDER

This matter comes before the Court for decision on the Consent Motion of Plaintiffs' John Doe 4, *et al.*, to Modify the Scheduling Order currently in effect in this case, entered January 22, 2018 (ECF Docket No. 19). For the reasons set forth in the Consent Motion, the Court finds that good cause for the relief requested has been shown, and that the Motion therefore should be GRANTED.

Accordingly, the Court hereby vacates the prior Scheduling Order; removes the hearing on Plaintiffs' Motion for Preliminary Injunction provisionally set for September 10-13, 2018, from the Court's calendar in light of Plaintiffs' determination to withdraw that Motion without prejudice; and imposes a new procedural schedule pursuant to which the Parties shall prepare this case for Trial as follows:

September 7, 2018

Deadline for Plaintiffs'
Disclosures regarding
Trial Experts

September 28, 2018	Deadline for Defendants' Disclosures regarding Trial Experts; Deadline for Completion of Fact Discovery
October 8, 2018	Deadline for Plaintiffs' Rebuttal Expert Disclosures
October 15, 2018	Deadline for Completion of Expert Depositions and Close of Discovery
October 22, 2018	Deadline for Submission of Dispositive Motions and Motions to Exclude Experts
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November 26,
2018

Combined Omnibus
Hearing on All Pending
Motions and Joint
Pretrial Conference

SO ORDERED this ___ day of August 2018.


The Hon. Elizabeth K. Dillon
U.S. District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of August 2018, a true and correct copy of the foregoing Plaintiffs' Consent Motion to Modify Scheduling Order was served *via* the Court's electronic case filing system upon the following:

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